

AMENDED IN SENATE AUGUST 17, 2004
AMENDED IN SENATE JULY 29, 2004
AMENDED IN SENATE MAY 26, 2004
AMENDED IN SENATE APRIL 22, 2004
AMENDED IN ASSEMBLY JANUARY 16, 2004
AMENDED IN ASSEMBLY SEPTEMBER 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1592

**Introduced by Committee on Veterans Affairs (Parra (Chair),
Cohn, Kehoe, Matthews, Mullin, Nakano, Salinas, and Wiggins)**

February 21, 2003

An act to amend Section 14845 of the Government Code, and to amend Sections 999, 999.5, 999.7, 999.9, 999.11, and 999.12 of the Military and Veterans Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1592, as amended, Committee on Veterans Affairs. California Disabled Veteran Business Enterprise Program.

(1) Under existing law, state agencies and all other state entities contracting for materials, supplies, equipment, alteration, repair, or improvement are required to have at least 3% participation goals for disabled veteran business enterprises. Existing law requires the Department of Veterans Affairs and the awarding departments to appoint a Disabled Veteran Business Enterprise Program Advocate to assist in meeting the participation goals.

The bill would specify that the Department of General Services is the administering agency of the California Disabled Veteran Business Enterprise Program except in the case of contracts for professional bond services, would specify the duties of the Department of General Services in meeting that requirement, would set standards for meeting the program's participation goals, and would specify reporting criteria regarding contracts entered into by awarding departments that participate in the program.

(2) Existing law makes it a misdemeanor to violate specified prohibitions relating to disabled veteran business enterprises.

This bill would make technical, conforming changes to that provision.

(3) Existing law requires the Department of General Services' small business advocate to provide, at a minimum, specified services to small businesses.

This bill, instead, would require the department's small business advocate to provide these services to certified small businesses and certified disabled veteran business enterprises.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14845 of the Government Code is
2 amended to read:

3 14845. Using existing resources, the Department of General
4 Services' small business advocate shall, at a minimum, provide the
5 following services:

6 (a) Assist certified small businesses and certified disabled
7 veteran business enterprises by providing information regarding
8 all of the following:

9 (1) Identification of potential certified small business and
10 certified disabled veteran business enterprise subcontractors and
11 potential subcontracting opportunities.

12 (2) Solicitation protest procedures and timelines.

13 (3) Prompt payment procedures.

14 (b) Using existing resources, develop and maintain an outreach
15 and education program to assist certified small businesses and
16 certified disabled veteran business enterprises to establish the
17 California multiple award schedule. The department shall actively



1 promote the availability of certified small business and certified
2 disabled veteran business enterprise suppliers to deliver or provide
3 a broad range of goods and services to governmental agencies
4 through their participation in the California multiple award
5 schedule program established pursuant to Chapter 2 (commencing
6 with Section 10290) of Part 2 of Division 2 of the Public Contract
7 Code and other types of contracts established by state agencies for
8 repetitively used and commonly needed goods and services.

9 (c) Whenever the director consolidates the needs of multiple
10 state agencies and establishes a contract for repetitively purchased
11 or commonly needed goods or services, the director shall both
12 encourage bidders to utilize certified small business and certified
13 disabled veteran business enterprise suppliers and subcontractors,
14 and utilize multiple award methods whenever practicable to
15 further ensure that a fair proportion of needed goods and services
16 are obtained from certified small businesses and certified disabled
17 veteran business enterprises.

18 (d) Using existing resources, establish a training and
19 development program for acquisition professionals, including
20 methods for structuring solicitations to enhance the participation
21 of certified small businesses and certified disabled veteran
22 business enterprises in state contracting.

23 (e) Using existing resources, the department shall establish a
24 recognition and awards program for state employees who make an
25 outstanding contribution to the state's overall effort to increase the
26 level of certified small business participation in state contracting
27 or certified disabled veteran business enterprise participation in
28 state contracting.

29 (f) Prepare, and make available to the public, a directory of
30 certified small business and certified disabled veteran business
31 enterprise suppliers.

32 (g) In its review of state agency acquisitions, the department,
33 as applicable, shall identify areas where improvements in the level
34 of participation of certified small businesses and certified disabled
35 veteran business enterprises in state contracting can be achieved.

36 SEC. 2. Section 999 of the Military and Veterans Code is
37 amended to read:

38 999. (a) The article shall be known as, and may be cited as,
39 the California Disabled Veteran Business Enterprise Program.

40 (b) As used in this article, the following definitions apply:

(1) “Administering agency” means the Treasurer in the case of contracts for professional bond services, and the Department of General Services’ Office of Small Business and Disabled Veteran Business Enterprise Services, in the case of contracts governed by Section 999.2.

(2) “Awarding department” means any state agency, department, governmental entity, or other officer or entity empowered by law to issue bonds or enter into contracts on behalf of the State of California.

(3) “Bonds” means bonds, notes, warrants, certificates of participation, and other evidences of indebtedness issued by, or on behalf of, the State of California.

(4) “Contract” includes any agreement or joint agreement to provide professional bond services to the State of California or an awarding department. “Contract” also includes any agreement or joint development agreement to provide labor, services, materials, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for, and on behalf of, the State of California.

(5) (A) “Contractor” means any person or persons, regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, age, or any sole proprietorship, firm, partnership, joint venture, corporation, or combination thereof who submits a bid and enters into a contract with a representative of a state agency, department, governmental entity, or other officer empowered by law to enter into contracts on behalf of the State of California. “Contractor” includes any provider of professional bond services who enters into a contract with an awarding department.

(B) “Disabled veteran business enterprise contractor, subcontractor, or supplier” means any person or entity that has been certified by the administering agency pursuant to this article and that performs a “commercially useful function,” as defined below, in providing services or goods that contribute to the fulfillment of the contract requirements:

(i) A person or an entity is deemed to perform a “commercially useful function” if a person or entity does all of the following:

(I) (aa) Is responsible for the execution of a distinct element of the work of the contract.

1 (ab) Carries out the obligation by actually performing,
2 managing, or supervising the work involved.

3 (ac) Performs work that is normal for its business services and
4 functions.

5 (II) Is not further subcontracting a portion of the work that is
6 greater than that expected to be subcontracted by normal industry
7 practices.

8 (ii) A contractor, subcontractor, or supplier will not be
9 considered to perform a “commercially useful function” if the
10 contractor’s, subcontractor’s, or supplier’s role is limited to that of
11 an extra participant in a transaction, contract, or project through
12 which funds are passed in order to obtain the appearance of
13 disabled veteran business enterprise participation.

14 (6) “Disabled veteran” means a veteran of the military, naval,
15 or air service of the United States, including, but not limited to, the
16 Philippine Commonwealth Army, the Regular Scouts “Old
17 Scouts,” and the Special Philippine Scouts “New Scouts,” who
18 has at least a 10 percent service-connected disability and who is
19 domiciled in the State of California.

20 (7) (A) “Disabled veteran business enterprise” means a
21 business certified by the administering agency as meeting all of the
22 following requirements:

23 (i) It is a sole proprietorship at least 51 percent owned by one
24 or more disabled veterans or, in the case of a publicly owned
25 business, at least 51 percent of its stock is owned by one or more
26 disabled veterans; a subsidiary that is wholly owned by a parent
27 corporation, but only if at least 51 percent of the voting stock of
28 the parent corporation is owned by one or more disabled veterans;
29 or a joint venture in which at least 51 percent of the joint venture’s
30 management, control, and earnings are held by one or more
31 disabled veterans.

32 (ii) The management and control of the daily business
33 operations are by one or more disabled veterans. The disabled
34 veterans who exercise management and control are not required to
35 be the same disabled veterans as the owners of the business.

36 (iii) It is a sole proprietorship, corporation, or partnership with
37 its home office located in the United States, which is not a branch
38 or subsidiary of a foreign corporation, foreign firm, or other
39 foreign-based business.

1 (B) Notwithstanding subparagraph (A), after the death or the
2 certification of a permanent medical disability of a disabled
3 veteran who is a majority owner of a business that qualified as a
4 disabled veteran business enterprise prior to that death or
5 certification of a permanent medical disability, and solely for
6 purposes of any contract entered into before that death or
7 certification, that business shall be deemed to be a disabled veteran
8 business enterprise for a period not to exceed three years after the
9 date of that death or certification of a permanent medical disability,
10 if the business is inherited or controlled by the spouse or child of
11 that majority owner, or by both of those persons.

12 ~~(7)–~~

13 (8) “Foreign corporation,” “foreign firm,” or “foreign-based
14 business” means a business entity that is incorporated or has its
15 principal headquarters located outside the United States of
16 America.

17 ~~(8)–~~

18 (9) “Goal” means a numerically expressed objective that
19 awarding departments and contractors are required to make efforts
20 to achieve.

21 ~~(9)–~~

22 (10) “Management and control” means effective and
23 demonstrable management of the business entity.

24 ~~(10)–~~

25 (11) “Professional bond services” include services as financial
26 advisers, bond counsel, underwriters in negotiated transactions,
27 underwriter’s counsel, financial printers, feasibility consultants,
28 and other professional services related to the issuance and sale of
29 bonds.

30 SEC. 3. Section 999.5 of the Military and Veterans Code is
31 amended to read:

32 999.5. (a) The administering agency for the California
33 Disabled Veteran Business Enterprise Program shall be the
34 Department of General Services, except in the case of contracts for
35 professional bond services. The Department of General Services
36 shall consult with the State Disabled Veteran Business Enterprise
37 Program Advocate, appointed by the Department of Veterans
38 Affairs pursuant to Section 999.11, on all matters relating to the
39 California Disabled Veteran Business Enterprise Program. The
40 Department of Veterans Affairs shall establish a method of



1 monitoring adherence to the goals specified in Sections 999.1 and
2 999.2.

3 (b) The Department of Veterans Affairs shall promote the
4 California Disabled Veteran Business Enterprise Program to the
5 fullest extent possible and shall maintain complete records of its
6 outreach efforts and set up a system to track its effectiveness. This
7 system shall include regular, periodic surveys of newly certified
8 disabled veteran business enterprises to determine how they
9 learned of the program, why they became certified, and what their
10 experience with awarding departments has been.

11 (c) An awarding department shall not credit toward the
12 department's 3-percent goal state funds expended on a contract
13 with a disabled veteran business enterprise that does not meet and
14 maintain the certification requirements.

15 (d) The administering agency shall adopt rules and regulations,
16 including standards for good faith efforts, for the purpose of
17 implementing this section. Emergency regulations consistent with
18 this section may be adopted.

19 SEC. 4. Section 999.7 of the Military and Veterans Code is
20 amended to read:

21 999.7. (a) *In addition to the reporting requirements set forth*
22 *in subdivision (b) of Section 999.5, on September 1 of each year,*
23 *the Disabled Veteran Business Enterprise Program Advocate for*
24 *each awarding department, appointed in accordance with Section*
25 *999.12, shall deliver to the administering agency a report on the*
26 *level of participation by disabled veteran business enterprises in*
27 *contracts identified in this article for the previous fiscal year.*

28 (b) The written report may include the following information:

29 (1) The total number of state contracts let by the department
30 during the reporting year.

31 (2) The total number of those contracts that included a disabled
32 veteran business enterprise.

33 (3) The total number of different disabled veteran business
34 enterprises that work on those contracts.

35 (4) The amount of the average contract payment to those
36 disabled veteran business enterprises.

37 (5) The total amount awarded to disabled veteran business
38 enterprises by the department for each of the previous three years.

39 (c) If the awarding department has not met the established goals
40 for that year, ~~the awarding department shall report to the~~

~~Legislature, the Department of General Services, and the Department of Veterans Affairs report shall state the reasons for the awarding department's inability to achieve the goals and shall identify steps that the awarding department shall take in an effort to achieve the goals.~~

(d) (1) On January 1 of each year, the Department of General Services shall deliver to the Governor, the Legislature, and the State Disabled Veteran Business Enterprise Program Advocate, a report that summarizes the reports specified in subdivision (a).

(2) The report shall be prepared in consultation with the Disabled Veteran Business Enterprise Program Advocate in the Department of Veterans Affairs.

SEC. 5. Section 999.9 of the Military and Veterans Code is amended to read:

999.9. (a) It shall be unlawful for a person to do any of the following:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a disabled veteran business enterprise for the purpose of this article.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity that has requested certification as a disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys, contracts, or funds expended under a contract, that are awarded by any state agency, department, officer, or other state governmental agency, to which the person is not entitled under this article.

(5) Knowingly and with intent to defraud, fraudulently represent participation of a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract.

1 (6) Willfully and knowingly make or subscribe to any
2 statement, declaration, or other document that is fraudulent or
3 false as to any material matter, whether or not that falsity or fraud
4 is committed with the knowledge or consent of the person
5 authorized or required to present the declaration, statement, or
6 document.

7 (7) Willfully and knowingly aid or assist in, or procure,
8 counsel, or advise, the preparation or presentation of a declaration,
9 statement, or other document that is fraudulent or false as to any
10 material matter, regardless of whether that falsity or fraud is
11 committed with the knowledge or consent of the person authorized
12 or required to present the declaration, statement, or document.

13 (8) Willfully and knowingly fail to file any declaration or
14 notice with the awarding agency that is required by Section 999.2.

15 (9) Establish, or knowingly aid in the establishment of, or
16 exercise control over, a firm found to have violated any of
17 paragraphs (1) to (8), inclusive.

18 (b) Any person who violates any of the provisions of
19 subdivision (a) shall be guilty of a misdemeanor punishable by
20 imprisonment in the county jail not exceeding six months or by a
21 fine not exceeding one thousand dollars (\$1,000), or by both. In
22 addition, the person shall be liable for a civil penalty of not less
23 than ten thousand dollars (\$10,000) nor more than thirty thousand
24 dollars (\$30,000) for the first violation, and a civil penalty of not
25 less than thirty thousand dollars (\$30,000) nor more than fifty
26 thousand dollars (\$50,000) for each additional or subsequent
27 violation. A defendant who violates any of the provisions of
28 subdivision (a) shall pay all costs and attorney's fees incurred by
29 the plaintiff in a civil action brought pursuant to this section.

30 (c) (1) The Department of General Services shall suspend any
31 person who violates subdivision (a) from bidding on, or
32 participating as either a contractor, subcontractor, or supplier in,
33 any state contract or project for a period of not less than three years,
34 and if certified as a disabled veteran business enterprise, the
35 department shall revoke the business' certification for a period of
36 not less than three years. An additional or subsequent violation
37 shall extend the periods of suspension and revocation for a period
38 of not less than five years. The suspension and revocation shall
39 apply to the principals of the business and any subsequent business
40 formed or financed by, or affiliated with, those principals.

(2) The Department of General Services shall prohibit any business or person who fails to satisfy the penalties, costs, and attorney's fees imposed pursuant to subdivision (b) from further contracting with the state until the penalties are satisfied.

(d) The awarding department shall report all alleged violations of this section to the Department of General Services. The Department of General Services shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

(e) The Department of General Services shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(f) No awarding department shall enter into any contract with any person suspended for violating this section during the period of the person's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person as a subcontractor suspended for violating this section during the period of the person's suspension.

(g) The awarding department shall check the central listing provided by the Department of General Services to verify that the person or contractor to whom the contract is being awarded, or any person being utilized as a subcontractor or supplier by that person or contractor, is not under suspension for violating this section.

SEC. 6. Section 999.11 of the Military and Veterans Code is amended to read:

999.11. The Secretary of the Department of Veterans Affairs shall appoint the State Disabled Veteran Business Enterprise Program Advocate. The State Disabled Veteran Business Enterprise Program Advocate shall report directly to the secretary and shall do all of the following:

(a) Oversee, promote, and coordinate efforts to facilitate implementation of this article.

(b) Disseminate information on this article.

(c) Coordinate reports pursuant to Section 999.7.

(d) Coordinate with administering agencies and existing and potential disabled veteran business enterprises to achieve the goals specified in Sections 999.1 and 999.2.

1 (e) Coordinate with the Disabled Veteran Business Enterprise
2 Program Advocate appointed in all awarding departments
3 pursuant to Section 999.12.

4 SEC. 7. Section 999.12 of the Military and Veterans Code is
5 amended to read:

6 999.12. Each awarding department shall appoint an agency
7 Disabled Veteran Business Enterprise Program Advocate.

8 This person shall be the same individual appointed pursuant to
9 Section 14846 of the Government Code. The agency Disabled
10 Veteran Business Enterprise Program Advocate shall do all of the
11 following:

12 (a) Assist certified disabled veteran business enterprises in
13 participating in that agency's contracting process.

14 (b) Assist contract officers in seeking disabled veteran business
15 enterprises to participate in the agency's contract and procurement
16 activities by performing good faith efforts to recruit disabled
17 veteran business enterprises to offer their services as either a prime
18 contractor or subcontractor on any contract proposed by the
19 awarding department which requires disabled veteran business
20 enterprise participation, and by other feasible means.

21 (c) Meet regularly with the State Disabled Veteran Business
22 Enterprise Program Advocate and contract and procurement staffs
23 of their departments to disseminate information about the
24 California Disabled Veteran Business Enterprise Program.

25 (d) Serve as an advocate for the disabled veteran business
26 enterprises that are utilized or are proposed to be utilized as the
27 agency's contractors or subcontractors by verifying all California
28 Disabled Veteran Business Enterprise Program information
29 submitted to the awarding department pertaining to bidders'
30 fulfillment of contract requirements for disabled veteran business
31 enterprise participation prior to the award of such contracts, by
32 participating in the department's decisionmaking on the award of
33 contracts which require disabled veteran business enterprise
34 participation, and ~~by work with contract managers who are~~
35 ~~responsible for~~ monitoring contractors' use of disabled veteran
36 business enterprise subcontractors on awarded ~~contracts and~~
37 ~~recommending to the awarding department's director or next~~
38 ~~highest ranking official, the Office of Small Business and Disabled~~
39 ~~Veteran Business Enterprise Services in the administering agency,~~
40 ~~and the State Disabled Veteran Business Enterprise Program~~

1 ~~Advocate in the Department of Veterans Affairs that payments to~~
2 ~~contractors be withheld when they fail to use disabled veteran~~
3 ~~business enterprises to the extent specified in their contracts.~~
4 ~~contracts.~~

5 (e) Report to the Office of Small Business and Disabled
6 Veteran Business Enterprise Services regarding any violation of
7 this article.

8 (f) Coordinate and meet, on a regular basis, with the State
9 Disabled Veteran Business Enterprise Program Advocate at the
10 Department of Veterans Affairs in an effort to meet the statewide
11 ~~3-percent~~ 3 percent goal provided for in Section 999.2.

